

McCrory administration won't explain decision that slowed election lawsuit



Civitas files lawsuit ch



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Gov. Pat McCrory's office still won't explain why it rejected the State Board of Elections' choice of lawyers to defend against a lawsuit challenging same-day-registration votes.

The decision Tuesday has forced the elections agency to rely on two in-house lawyers, who are also working on other election matters, to fight the conservative Civitas Institute's claim.

The institute is suing to delay counting ballots cast using same-day registration. Its lawsuit addresses the more than 90,000 people who registered to vote and voted on the same day prior to the Nov. 8 general election.

Civitas says in the lawsuit that there's not enough time between their registration and the State Board of Elections counting their ballots for the local county boards of election to verify applicants' addresses. The group wants those ballots removed until the verification process is complete – a move that could delay the resolution of the close governor's race between Republican McCrory and Democrat Roy Cooper.

One of Civitas' primary donors is businessman Art Pope, the former budget director for McCrory. Civitas' attorney for the lawsuit is Butch Bowers, who has represented McCrory in lawsuits involving House Bill 2, the law limiting protections for LGBT people, as well as the state's voter ID law, which ended same-day registration until it was overturned by a federal court.

A hearing on the lawsuit is set for Thursday before U.S. District Court Judge James Dever – a date set after the State Board of Elections sought a delay because McCrory's office rejected its picks for attorneys.

The State Board faces a Friday deadline under state law to make the results of November's election official, and it's on target to meet that deadline unless Civitas wins its lawsuit.

Civitas President Francis De Luca said he doesn't think the delay in the hearing will hurt his group's case. "We would have preferred to go earlier," he said, but added that "if the judge agrees with our argument, they can still go back and pull out the bad ballots" even if the elections results are already certified.

Elections law attorney Michael Weisel, who is not involved in the case, says Civitas faces a "very high bar" to prevail in the lawsuit.

"Interference with an election process - any judge is going to be pretty hesitant to do that," Weisel said.

Weisel, a Democrat, says Civitas might have fared better if the State Board of Elections had missed its initial Wednesday deadline to file a response. That deadline came one day after McCrory's attorney, Bob Stephens, emailed the board to deny its request to hire attorneys.

The State Board of Elections' in-house lawyers secured an extension of that deadline, but if they hadn't, "the federal court in its discretion could have issued a sanction, preventing you from making arguments that you didn't brief" in a written filing, Weisel said.

"I think this is a conscious, deliberate effort to gain a litigation advantage in federal court by the McCrory campaign," he added.

The elections board decided shortly after Election Day that it would hire outside attorneys for any lawsuit involving the election results. The board typically is represented by the attorney general's office, but the board decided that would pose a potential conflict of interest because Cooper, the attorney general, is a candidate.

State law requires the governor's office to sign off on hiring of outside attorneys. Stephens denied three of the four attorneys requested by the State Board of Elections; he did not provide a reason but had raised conflict-of-interest questions before making the decision.

Reached Friday, McCrory spokesman Josh Ellis declined to comment on the decision.

The three rejected attorneys work for the firm of Brooks, Pierce, McLendon, Humphrey & Leonard LLP. Jim Phillips, who is serving as co-chairman of Cooper's transition team, is among the dozens of lawyers at the firm but was not who the elections board wanted to hire.

The only attorney Stephens approved is Thomas Ziko, who was only going to be involved "in a limited capacity," according to an elections board memo. Two of the three rejected attorneys are registered Republicans, and one of them - Charles Marshall - once worked for GOP U.S. Sen. Mitch McConnell, who's now the Senate majority leader.

De Luca said Civitas had no objection to the attorneys and had used one of them before in an unrelated case. "We were perfectly fine with their selection of lawyers," he said.

After securing a one-week delay in the lawsuit hearing, the State Board of Elections did not hire other outside attorneys. It will be now represented by its two staff attorneys, Josh Lawson and Katelyn Love, whose other work includes a hearing that took place Saturday on two Bladen County election complaints.

"I do think there has been a significant handicap in the McCrory administration's denial to allow the board to have their outside counsel," Weisel said.

Two outside groups have filed court documents opposing Civitas' request. The Southern Coalition for Social Justice calls it an "effort to disenfranchise voters" and "a last-ditch effort to overturn the results of a legitimate election."

On Friday, the North Carolina NAACP announced it will file a motion to dismiss the Civitas Institute's request.

"It would appear they are using the suit to broadcast an agenda and to stall the certification of the election results," said Martha Geer, a former judge who's representing the NAACP. "The case seems to be part of an overall delay strategy that has escalated over the last few weeks and that needs to come to an end."

De Luca criticized the NAACP's decision to get involved. "I think it's real hypocritical for them to criticize us for using the courts to try to fix something election-related when that's all they do," he said. "(NAACP state President) William Barber is acting more like a partisan than a reverend."